IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.180 of 2006

Decided on : 22nd October, 2007

Dhian Singh **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the appellant : Mr. N.K. Thakur, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Appellant has preferred this appeal against the judgment of the Sessions Court, whereby he has been convicted of the offences under Sections 302 and 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of six months for the offence under Section 302 I.P.C. and to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of one month, in respect of offence under Section 201 I.P.C.

2. First, we may notice the prosecution version. A police party headed by ASI Tarlok Chand (PW-9) and ASI Saroop Singh (PW-9) of which deceased Mohinder Raj, Constable, the appellant, who was

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Whether reporters of the local papers may be allowed to see the judgment?

then working as a Special Police Officer and one more Special Police Officer named Roop Singh, were the members, left Police Station Tissa on 7.8.2003, to investigate a case of theft of two oxen. The party went to a place towards Jammu and Kashmir border and associated with them Rajdeen (PW-19), the owner of the stolen oxen, and one Mamdeen, the alleged suspect. Mamdeen told the police officials that he had sold the oxen to one man across the J & K border. The police party then asked Mamdeen to go across the border and bring the oxen back. Police people waited for him on this side of the border for some time and when he did not return, the above named ASIs, the deceased, the appellant and Roop Singh, another SPO accompanying them and some local men, went across the border. One Brij Lal met them in a village across the border and told that Mamdeen had sold the oxen to a named person. He offered the police people to lead them to the house of that named person. When the police party was accompanying said Brij Lal to the house of the person to whom the oxen had allegedly been sold by Mamdeen, four-five persons in black clothes, who had long hair and were also supporting long beards, were seen with some fire arms in their hands. Brij Lal signalled to the police people to run away to save their lives. Mamdeen, the suspect, was also with those persons wearing black clothes. They were militants operating in the State of Jammu and Kashmir. The two ASIs and HC Raghubir Singh were able to cross the border safely. The appellant and deceased Mohinder Raj ran in some different direction. It was foggy and was also raining. The two ASIs and HC Raghubir Singh on return to the police station on 9.8.2003, made an entry in the *Rojnamcha*, maintained at Police Station, Tissa.

3. On 11.8.2003, the present appellant was allegedly spotted by some *Gujjars* in the forest. He was having some injuries on his person. He was carrying one AK-47 rifle which had been handed over to him by Head Constable Raghubir Singh as he found it difficult to carry the same himself. *Gujjars* informed the police about the appellant having been spotted. The appellant was taken to the hospital where his statement was recorded. As per the statement given by him to the police, when the terrorists started firing at the police party, they ran for protection towards the border and lost the track in a thick forest because of it being foggy and soon three terrorists appeared and started firing at them and that one bullet fired by the terrorists hit the deceased on his chin, as a result of which he fell. The appellant then took the police to the site where the dead body of deceased Constable Mohinder Raj was lying. Postmortem examination was conducted. No bullet injury on any part of the dead body was there, though fractures of chin and some other bones of the face were noticed, which according to the doctor, could have been caused by means of some blunt weapon. Nose of the dead body was missing. Postmortem examination was conducted on 19.8.2003 and the probable time lag between the death and the postmortem was opined to be within two weeks. The probable time that elapsed between the death and the injuries was opined to be a few minutes.

4. Trial Court has convicted the appellant holding that the circumstances do prove that he committed the murder. The relevant circumstances, which have been noticed by the trial Court, are as follows:-

1. Deceased and the appellant were together when the deceased sustained the fatal injury;

2. The appellant has taken a false plea that the fatal injury was caused by a bullet fired by the terrorists.

5. We have heard the learned counsel for the appellant, the learned Additional Advocate General and perused the record. It is the admitted case of the parties that the deceased, the appellant, the two ASIs, one Head Constable Raghubir Singh and one more Special Police Officer and a few local persons from the area, had gone across the border together and that their party was fired at by some militants and to save their lives, they ran back. It is also the prosecution's own version that it was foggy and was raining and, therefore, the members of the party could not hold together and they ran in different directions to escape the fury of the terrorists. There is absolutely no evidence suggesting that the present appellant was in any way responsible for causing the fatal injury to the deceased. Even this much does not stand proved that the appellant and the deceased were together when the deceased sustained the fatal injury on his chin and other parts of his face. The statement, allegedly made by the appellant to the police i.e. Ext.PW13.A, has not been proved. The appellant denies having made this statement. Kartar Singh, Inspector Police, who allegedly recorded this statement, was not examined by the prosecution. Similarly, when the appellant denies having made the statement Ext.PW13/B and it has not been proved, as aforesaid, the fact mentioned therein, viz. a bullet fired by the terrorists hit the deceased on the chin, cannot also be said to be proved and, therefore, it cannot be said that the appellant made a false statement that the deceased died of a bullet injury received at the hands of the terrorists. There is no other circumstance worth noticing indicative of the involvement of the appellant. It is not the case of the

prosecution that the appellant had any motive to kill the deceased. Rather, from the prosecution's own version, it appears that they were comrades in arms at the time when the death of the deceased took place because they were facing the terrorists from J & K border and were defending themselves against them.

6. As a result of the above stated position, the appeal is accepted and the judgment of the trial Court convicting and sentencing the appellant of the aforesaid offences, is set aside and he is acquitted. He being in jail, serving out the sentence awarded by the trial Court, which has been set aside hereinabove, is ordered to be released forthwith, in case his detention is not required in any other case.

7. The appeal is disposed of.

(Surjit Singh), J

October 22, 2007 (ss) **(Surinder Singh), J**